

EXHIBIT D



PUBLIC NOTICE

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DA 16-264
March 14, 2016
Enforcement Advisory No. 2016-03

FCC ENFORCEMENT ADVISORY

TELEPHONE CONSUMER PROTECTION ACT ROBOCALL AND TEXT RULES

BIENNIAL REMINDER FOR POLITICAL CAMPAIGNS ABOUT ROBOCALL AND TEXT ABUSE

With the 2016 campaign season underway, the FCC's Enforcement Bureau reminds political campaigns and calling services that there are clear limits on the use of autodialed calls or texts (known as "robocalls") and prerecorded voice calls. The FCC is committed to protecting consumers from harassing, intrusive, and unwanted robocalls and texts, including to cell phones and other mobile devices.

Since its adoption in 1991, the Telephone Consumer Protection Act ("TCPA") has placed limits on unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed calls or prerecorded voice calls to wireless numbers, emergency numbers, and patient rooms at health care facilities. The FCC's corresponding rules¹ governing automated telephone calls set forth restrictions that govern the use of prerecorded voice messages and automatic telephone dialing systems including those that deliver text messages. These provisions apply to all such prerecorded voice calls and autodialed calls or texts, including those made by political campaigns or other organizations involved in the 2016 election. The restrictions vary according to whether a call is delivered to a business or residential landline telephone, a cell phone, or some other category of protected telephone lines such as toll-free lines, emergency lines, or those lines servicing hospitals, nursing homes, or paging systems.²

We expect this Advisory will facilitate compliance with the law and rules by senders of campaign related voice messages and autodialed calls and texts and again remind all those using these tool to carefully observe the legal limits. The FCC's Enforcement Bureau will rigorously enforce the important consumer protections in the TCPA and our corresponding rules.

¹ See 47 CFR § 64.1200.

² By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 CFR § 64.1200.

Prohibition Against Prerecorded Voice Messages and Autodialed Calls to Cell Phones and Other Mobile Services. Prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and text messages) to cell phones and other mobile services such as paging systems are prohibited, subject to only three exceptions: (1) calls made for emergency purposes, (2) calls made with the prior express consent of the called party, (3) and calls made to collect debts “owed to or guaranteed by the United States.”³ This broad prohibition covers prerecorded voice and autodialed calls, including those sent by nonprofit or political campaign-related organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.⁴ Further, call recipients may revoke their consent to be called using any reasonable method including verbally or in writing.⁵

Prerecorded Voice Messages and Autodialed Calls to Landline Telephones. Political campaign-related prerecorded voice messages or autodialed calls—whether live or prerecorded—to most landline telephones are not prohibited, so long as they adhere to the identification requirements set forth immediately below. However, prerecorded campaign-related voice messages or autodialed calls to emergency telephone lines; lines in guest or patient rooms at a hospital, nursing home, or similar establishment; or toll-free lines are prohibited unless the called party has agreed to receive such calls.⁶

Identification Requirements for Prerecorded Voice Messages. All prerecorded voice messages, campaign-related and otherwise, that are permissible under Section 227 of the Communications Act of 1934, as amended, and the Commission’s rules must include certain information to identify the party responsible for the message. In particular:

- All artificial and prerecorded voice messages must state clearly, at the beginning of the message, the identity of the business, individual, or other entity that is responsible for initiating the call.⁷
- If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity’s official business name (the name registered with a state corporation commission or other regulatory authority).⁸
- In addition, the telephone number of such business, individual, or other entity must be provided either during or after the prerecorded voice message.⁹

³ See 47 U.S.C. § 227(b)(1)(A)(iii); see also 47 CFR § 64.1200(a)(1)(iii) (prohibiting such calls to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service which the called party is charged for the call”). Congress has amended the TCPA to exempt federal debt collection calls and the Commission is in the process of implementing rules related to that exemption.

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7990, para. 47 (2015) (*TCPA Omnibus Declaratory Ruling and Order*); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to deliver prerecorded voice or autodialed calls to cell phones are responsible for demonstrating such consent was granted).

⁵ *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7996, para. 64.

⁶ Non-emergency prerecorded voice or autodialed calls to such destinations are permissible only with the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

⁷ 47 U.S.C. § 227(d)(3)(A)(i); 47 CFR § 64.1200(b)(1).

⁸ 47 CFR § 64.1200(b)(1).

⁹ 47 U.S.C. § 227(d)(3)(A)(ii); 47 CFR § 64.1200(b)(2). Any telephone number so provided may not be for (1) the

Line Seizure by Prerecorded Voice Messages and Autodialed Calls. Automatic telephone dialing systems that deliver prerecorded voice messages must release the called party's telephone line within five seconds of the time that notification is transmitted to the system that the called party has hung up.¹⁰ In addition, an automatic telephone dialing system may not be used in a way that simultaneously engages two or more telephone lines of a multi-line business.¹¹

As we have done in previous election cycles, we remind senders of campaign-related prerecorded voice messages and autodialed calls or texts that failure to comply with the relevant sections of the TCPA and corresponding rules may subject them to enforcement action, including monetary forfeitures as high as \$16,000 per violation for any person who does not hold a license or other authorization issued by the Commission.¹²

autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 CFR § 64.1200(b)(2).

¹⁰ 47 U.S.C. § 227(d)(3)(B); 47 CFR § 68.318(c).

¹¹ 47 U.S.C. § 227(b)(1)(D); 47 CFR § 64.1200(a)(5).

¹² This amount reflects inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) of the Communications Act. Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation by a person who is not a broadcast station licensee, cable operator, common carrier, or applicant for any broadcast station, cable operator, or common carrier license issued by the Commission. See 47 U.S.C. § 503(b)(2)(D). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785, 10786-790, paras. 3-5 (EB 2013); see also *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. 49370-01, 49370 (2013) (setting September 13, 2013, as the effective date for the increases). The Commission has made such inflation adjustments and the current maximum forfeiture is \$16,000 for each violation under Section 503(b)(2)(D). See *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. at 49371. The penalties for broadcast station licensees, cable operators, common carriers, and applicants for broadcast station, cable operator, and common carrier licenses are higher.

Need more information? For further information regarding requirements for prerecorded voice and autodialed calls, contact: Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov in the Telecommunications Consumers Division, Enforcement Bureau. More information can also be found at www.fcc.gov/guides/robocalls. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALL-FCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or will.wiquist@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Telephone Consumer Protection Act.

Attachments: (1) "At a Glance," Political Calls; (2) Frequently Asked Questions.

Issued by: Chief, Enforcement Bureau

ATTACHMENT 1

"AT A GLANCE"

POLITICAL CALLS

- Political campaign-related calls are subject to restrictions governing prerecorded voice and autodialed calls.
- There are no restrictions on live manually-dialed political calls, which may be delivered to any landline telephone or cell phone.
- Prerecorded voice and autodialed calls may NOT be delivered to the following types of landline phones without the prior express consent of the called party:
 - ✓ any emergency line (including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
 - ✓ the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
 - ✓ any service for which the called party is charged for the call such as toll-free lines.
- Prerecorded voice and autodialed calls (including live calls, prerecorded voice messages, and text messages) may NOT be delivered to cell phones, pagers, or other mobile devices without the prior express consent of the called party. This restriction governs all prerecorded voice and autodialed calls.
- All prerecorded voice messages must contain the following information:
 - ✓ the name of the person or entity responsible for the call, which must be provided at the beginning of the message;
 - ✓ the telephone number of the person or entity responsible for the call, which must be provided during or after the message.
- The National Do-Not-Call Registry and company-specific do-not-call lists do not apply to political calls.
- Individuals or entities who do not hold (and are not required to hold) FCC licenses responsible for unlawful political prerecorded voice messages or autodialed calls may face forfeiture penalties of up to \$16,000 per violation. The penalties are higher for FCC licensees, such as broadcasters, cable operators, and common carriers.

ATTACHMENT 2

FREQUENTLY ASKED QUESTIONS

The following Frequently Asked Questions are addressed in this Advisory:

- What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?
- What is an autodialed call?
- Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?
- What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?
- Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?
- Do the rules allow me to send campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do Not Call Registry?
- Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?
- What if I have questions?

What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?

These calls are subject to the general restrictions on prerecorded voice messages and autodialed calls, found at 47 U.S.C. § 227 and 47 CFR § 64.1200.

What is an autodialed call?

An autodialed call is any type of call or message, including a text message, that is made by an “autodialer” or “automatic telephone dialing system,” which is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.”¹ The Commission has emphasized that this definition covers any equipment—including predictive dialers—that has the specified *capacity* to dial numbers without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from calling lists.² The Commission has further emphasized that the capacity of a dialing system is not limited to any current configuration or present ability but also includes

¹ 47 CFR § 64.1200(f)(2).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14092-93, para. 133 (2003) (2003 TCPA Order). Predictive dialers use automated equipment to dial numbers (either from lists or randomly or sequentially) and then connect the called party to a live person. The distinctive element of a predictive dialer is software that predicts calling patterns to minimize the time live agents spend between calls while also minimizing the incidence of individuals answering a call when no agent is available.

potential functionalities that are more than mere theoretical possibilities.³ Finally, the Commission has made clear that Internet-to-phone text messaging technology and text messaging apps that send to all or virtually all text-capable U.S. phone numbers constitute autodialers.⁴

Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?

No. Although nonprofit organizations enjoy certain exemptions under the TCPA, there is NO blanket exemption that allows nonprofit organizations to make either prerecorded voice calls or autodialed calls or texts to cell phones or other mobile service numbers without prior express consent.

What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?

Under Commission rules, “emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.” 47 CFR § 64.1200(f)(4). Political campaign-related prerecorded voice messages and autodialed calls are NOT included in this definition.

Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?

Yes. The Commission has determined that the prohibition against placing autodialed calls to cell phones without prior express consent “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to [a wireless] service.”⁵ Accordingly, only manually placed text messages are permissible without prior express consent.

Do the rules allow me to send political campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do-Not-Call Registry?

Yes. Political campaign-related prerecorded voice messages (as well as live political calls) are not subject to the National Do-Not-Call Registry because such messages (or live calls) do not include telephone solicitations.⁶

Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?

There are a variety of commercial services that callers may use to identify wireless telephone numbers.

What if I have questions?

For further information regarding requirements for prerecorded voice and autodialed calls, contact one of the following individuals in the Telecommunications Consumers Division, Enforcement Bureau: Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALLFCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or will.wiquist@fcc.gov.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7974-77, paras. 15-21 (2015).

⁴ *Id.* at 8017-22, paras. 108-22.

⁵ 2003 TCPA Order, 18 FCC Rcd at 14115, para. 165.

⁶ In order to constitute a “telephone solicitation,” a call or message must be “for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” 47 CFR § 64.1200(f)(14); *see also* 47 U.S.C. § 227(a)(4).